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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/044,853   | 11/07/2001  | Kenneth G. Lang      | 60,130-1120 01MRA0246 | 9810             |
| 26096  | 7590        | 03/24/2004           | EXAMINER              |                  |
| CARLSON, GASKEY & OLDS, P.C.<br>400 WEST MAPLE ROAD<br>SUITE 350<br>BIRMINGHAM, MI 48009 |             |                      | DRAPE, DEANN L        |                  |
|  |             |                      | ART UNIT              | PAPER NUMBER     |
|  |             |                      | 3616                  |                  |

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                                  |                  |              |  |
|----------------------------------|------------------|--------------|--|
| <b>Office Action Summary</b>     | Application No.  | Applicant(s) |  |
|                                  | 10/044,853       | LANG ET AL.  |  |
| Examiner<br><br>Deanna L. Draper | Examiner         | Art Unit     |  |
|                                  | Deanna L. Draper | 3616         |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 January 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 22-24 is/are allowed.
- 6) Claim(s) 1-4, 6-16 and 18-21 is/are rejected.
- 7) Claim(s) 5 and 17 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 January 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>Paper No(s)/Mail Date _____.</li> </ol> | <ol style="list-style-type: none"> <li>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. _____.</li> <li>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6) <input type="checkbox"/> Other: _____.</li> </ol> |
|--|---|

***Acknowledgements***

The Amendment filed by the Applicant on January 5, 2004 is acknowledged. Claims 22 – 24 have been added.

***Drawings***

The drawing correction was received on January 5, 2004. This correction is acceptable.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 4, 6, 7, 10 – 16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Pierce et al. (US 5,921,532). Pierce discloses an air spring with internal support member, including a first support member/bead plate attached to a body of the vehicle (502 in Fig. 12), a second support member/retainer plate that moves relative to the first support member (506 in Fig. 12), at least one air spring coupled with the first and second support members (504 in Fig. 12), and a jounce bumper within the air spring having a first bumper portion/body relative to the first support member (508 in Fig. 12) and a second bumper portion/body supported to move with the second support member (510 in Fig. 12). The jounce bumper portion bodies each have an axis near a center of the body (see attachment – Axis 1 and Axis 2). The jounce bumper

portions each include a surface configuration that maintains a first minimal spacing between the support members when the first and second portions are in a first alignment position and maintains a second spacing between the support members when the first and second portions are in a second alignment position (Col. 11, line 58 – Col. 12, line 5). The bumper portions have a surface configurations/projections (514, 516 in Fig. 12) wherein the wedge-shaped projections extend towards one another in an axial direction and are circumferentially spaced about the bumper portions, and do not contact each other when the first and second portions are in the first alignment position (see Fig. 12), but the jounce bumper portion (508) rotates about the axis (see attachment Axis 3) to coaxially align the jounce bumper portion bodies, which contact each other in the second alignment position (Col. 11, line 63 – Col. 12, line 24; *when the upper and lower bumpers are in alignment, the air spring maintains a minimum predetermined height, and when they are out of vertical alignment, 506 “can move vertically a substantial distance relative to the top plate 502”*; *and end surfaces 514 and 516 are also referred to as “horizontal abutment surfaces”*). Each bumper portion also has a sloped surface wherein the sloped surfaces are in a generally parallel alignment when the bumper portions are in the first alignment position (see parallel sloped surfaces in Fig. 12, attached). Pierce also discloses an actuator that is operative to selectively move at least one of the jounce bumper portions into the first or second alignment position (512 in Fig. 12).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce et al. Pierce discloses the invention as claimed above, including an air source operative to control a brake on the vehicle and providing a signal to the actuator that is indicative of a desired alignment of the bumper portions (556 in Fig. 14; Col. 12, line 66 – Col. 13, line 17). However, Pierce discloses an actuator that is pneumatically powered (see Fig. 14; Col. 12, line 66 – Col. 13, line 8), rather than hydraulically powered. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a hydraulically powered actuator, since the examiner takes Official Notice of the equivalence of hydraulically powered and pneumatically powered actuators for their use in the vehicle suspension art and the selection of any of these known equivalents to a pneumatically powered actuator would be within the level of ordinary skill in the art.

Claims 18 – 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charles (US 5,308,104). Charles discloses a jounce bumper with a first elastomeric portion having a first surface configuration (78 in Fig. 2; Col. 3, lines 37 – 39) and a second portion having a second surface configuration (114 in Fig. 2) that cooperates with the first surface configuration so that a total thickness of the first and second portions is selectively varied depending on the alignment between the first and second portions (Col. 4, lines 3 – 9). Charles also discloses a jounce bumper wherein the first surface configuration includes a plurality of

projections (see 108 in Fig. 2) interdigitated with a plurality of recesses (110 in Fig. 2) and the second surface configuration includes a corresponding plurality of projections (112 in Fig. 2) interdigitated with the recesses, where the recesses on each portion are sized to receive the projections on the other portion. The portions are partially wedge shaped and include cooperating sloped surfaces (see 110, 118 in Fig. 2). Charles discloses the invention as claimed above, however, the second portion is not elastomeric. Charles says that the second portion is “*preferably...* formed from a rigid, non-compressible material” (italics added) – *preferable*, but not *necessarily* rigid. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use an elastomeric material for the second portion, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

#### ***Allowable Subject Matter***

Claims 22 – 24 are allowed.

Claims 5 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1 – 4, 6 – 16, and 18 – 21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deanna L. Draper whose telephone number is 703-306-5939. The examiner can normally be reached on Monday - Friday, 9:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

DEANNA L. DRAPER  
PATENT EXAMINER  
dld

  
3/18/04  
PAUL N. DICKSON  
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